

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
SEVENTH REGION

W-L MOLDING COMPANY, INC.¹

Employer

and

CASE GR-7-RD-3245

SANDRA RUNCIE, An Individual

Petitioner

and

UNITED STEELWORKERS OF AMERICA,
AFL-CIO, CLC²

Union

APPEARANCES:

Richard D. Fries, Attorney, of Kalamazoo, Michigan, for the Employer.

Sandra Runcie, pro se

Richard G. Mack, Jr., Attorney, of Detroit, Michigan, for the Union.

DECISION AND ORDER

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, hereinafter referred to as the Act, a hearing was held before a hearing officer of the National Labor Relations Board, hereinafter referred to as the Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

¹ The Employer's name appears as amended at the hearing.

² The Union's name appears as amended at the hearing.

Upon the entire record in this proceeding,³ the undersigned finds:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

2. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein.

3. The labor organization involved claims to represent certain employees of the Employer.

4. No question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Sections 2(6) and (7) of the Act.

5. The Employer is engaged in the manufacture and non-retail sale of molded plastic parts at its Portage, Michigan plant. The Petitioner seeks a decertification election among about 76 employees within the production, maintenance, and shipping employees unit set forth in the current contract between the Employer and the Union. The Union contends that the contract constitutes a bar to the instant petition. Both the Employer and Petitioner contend that the contract contains an unlawful union security clause because the contract is retroactive, thereby rendering it invalid as a bar to the petition.⁴

The Petitioner filed the decertification petition in this case on June 1, 2000. By its express terms, the contract between the Employer and Union was "made and entered into as of the 12th day of September, 1999," although the final written agreement was not signed until

³ The Employer and Union filed briefs, which were carefully considered.

⁴ The union security clause at Article IV "Membership" reads as follows:

Section 1: Present Membership - It shall not be a condition of employment for employees hired prior to September 12, 1986 to join the Union. However, any employees who is, or becomes, a member of the Union in good standing shall remain members of the Union in good standing as a condition of employment.

Section 2: New Members - It shall be a condition of employment that newly hired employees become members of the Union upon completion of sixty (60) calendar days of work and must maintain their membership to the extent of paying the period dues and initiation fees uniformly required of all Union members.

Section 3: Default in Membership - Any employee who is, or becomes, a member of the Union who fails to meet the requirements of Section 1 shall not be retained in the employ of the Company provided that the Union shall have notified the Company and the employee in writing of such default and said employee shall have failed to remedy the same within ten (10) days after receipt of telegram, registered letter, return receipt requested, or by personal contact in the presence of a witness.

November 17, 1999. The term of the agreement is described as follows: "This Agreement shall be in full force and effect beginning the 13th day of September, 1999, and shall continue in effect through the 12th day of September, 2003...."⁵ There is no reference in the contract to it being retroactive from the date it was signed by the parties. Instead, on the face of the contract, it became effective on September 13, 1999. Indeed, the parties stipulated to the admission of bargaining proposals and tentative agreements, as part of the Union's offer of proof, that were agreed to and initialed by the Employer and Union prior to September 12, 1999, and were later memorialized in the final written agreement signed by the parties on November 17. Many of these bargaining proposals and tentative agreements were based on modifications or adaptations of the terms of the predecessor contract which expired on September 12, 1999. Consequently, there was no hiatus between the expiration of the predecessor contract and the effective date of current contract.

Based on the foregoing, this case is controlled by *Federal-Mogul Corp.*, 176 NLRB 619 (1969), rather than *Standard Molding Corp.*, 137 NLRB 1515 (1962), as urged by the Employer. The contract herein is not retroactively effective from November 17. Instead, it is clear from the terms of the contract itself, and the circumstances, that it was made and entered into on September 12 and that it became effective on the following day, September 13. Consequently, there is no reason for concern that the union security clause in the contract has the potential to deprive nonmember incumbent employees and new hires of the statutory 30-day grace period required by law for obtaining union membership subsequent to the execution date of the agreement. *Standard Molding*, supra.

I am also convinced that even if a decertification petition had been filed before the contract was finally memorialized by the parties by their signatures on November 17, the bargaining proposals and tentative agreements initialed by the parties by September 12 were sufficient to make the contract effective on September 13 for contract bar purposes. See *Gaylord Broadcasting*, 250 NLRB 198 (1980); *Georgia Purchasing*, 230 NLRB 1174 (1977).

Based on the foregoing, I find the contract a bar to the instant decertification petition.

IT IS HEREBY ORDERED that the petition be, and hereby is, dismissed.⁶

⁵ Since the contract is of unreasonable duration by its four-year term, it is treated as limited to a reasonable period of three years for contract bar purposes. *General Cable Corp.*, 139 NLRB 1123 (1962). Consequently, a timely petition may be filed 60 to 90 days prior to the third anniversary date of the contract (September 13, 2002). *Union Carbide Corp.*, 190 NLRB 191, 192 (1971).

⁶ Under the provisions of the Board's Rules and Regulations, a request for review of this Decision and Order may be filed with the **National Labor Relations Board**, addressed to the **Executive Secretary, Franklin Court, 1099 14th Street N.W., Washington, D.C. 20570**. This request must be received by the Board in Washington by **JULY 13, 2000**.

Dated at Detroit, Michigan, this 29th day of June, 2000.

William C. Schaub, Jr., Regional Director
National Labor Relations Board
Seventh Region
Patrick V. McNamara Federal Building
477 Michigan Avenue - Room 300
Detroit, Michigan 48226

347-4010-2035
347-4040-6725